Local 295, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* Emery Air Freight Corporation and Local 504, Transport Workers Union of America, AFL-CIO

Local 295, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *and* Servair, Inc. and Emery Air Freight Corporation and Local 504, Transport Workers Union of America, AFL-CIO. Cases 29-CD-273 and 29-CD-274

April 20, 1981

DECISION AND DETERMINATION OF DISPUTE

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following charges filed by Emery Air Freight Corporation and Servair, Inc., herein called Emery and Servair, respectively, alleging that Local 295, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called Teamsters or Local 295, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring Emery and Servair to assign certain work to its members rather than to employees represented by Local 504, Transport Workers Union of America, AFL-CIO, herein called Transport Workers or Local 504.

Pursuant to notice, a hearing was held before Hearing Officer William Shuzman on May 14, 1980. Local 295 and Servair appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYERS

The parties stipulated, and we find, that Servair, a Delaware corporation with its principal place of business located at J.F.K. International Airport, Jamaica, New York, is engaged in a broad range of ground services provided to various airlines at airports throughout the United States. During the past year, Servair purchased goods from outside the State of New York having a value in excess of $50,000. The parties also stipulated, and we find, that Servair is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

Further, we find that Emery, a Delaware corporation with its headquarters in Wilton, Connecticut, is engaged in the business of air freight forwarding. During the past year, Emery derived gross revenue in excess of $500,000 from the shipment of goods from points located within the State of New York directly to points located outside the State.

Local 295, however, contends that the Board lacks jurisdiction in this proceeding because Emery is a common carrier, and thus is subject to the Railway Labor Act, herein called RLA, rather than the National Labor Relations Act. In support of this contention, Local 295 points to the fact that Emery owns 9 aircraft and charters approximately 57 other aircraft. Local 295 asserts that Emery has exclusive control over the aircraft operated to transport Emery freight, so as to render Emery subject to the provisions of the RLA. In this regard, Local 295 introduced into evidence Emery's application for authority to operate an all-cargo air service pursuant to section 418 of the Federal Aviation Act, and the actual certification obtained from the Civil Aeronautics Board under section 418. Local 295 also claims that Emery's Form 10-K filed with the Securities and Exchange Commission for 1979 leads to the conclusion that Emery is subject solely to the jurisdiction of the RLA. In this document, Emery states that it "serves the shipping public as a carrier but does not itself operate the airplanes on which the freight is moved." Further, in its Form 10-K, Emery declares that it "competes with numerous other air carriers, including the airlines" and "the air taxi operators" in the conduct of its business. In addition, Local 295 cites various annual reports and promotional materials issued by Emery which refer to Emery's "Air Force" and Emery's "small package airline" as evidence that Emery views itself as a common carrier.

Even assuming that the Emery operation which is the subject of the instant proceeding is not itself an air carrier, Local 295 argues that Emery's freight-forwarding operation is so related to and controlled by common carriers within the meaning of the RLA that jurisdiction under that act traditionally will be asserted.

In support of its contention that the National Labor Relations Board has jurisdiction over Emery, Servair notes that the National Mediation Board has determined that air freight forwarders are not subject to the RLA.[1] Servair also points

[1] At the hearing in the instant 10(k) proceeding, the parties stipulated that the transcript and exhibits of the hearing before the Administrative *Continued*

out that, in 1972, the National Labor Relations Board asserted jurisdiction over Emery's operation in a matter involving other unfair labor practices committed by Local 295.[2]

There is extensive testimony that, although Emery owns aircraft, it does not operate, nor has it ever operated, any aircraft. Emery does not employ pilots, flight engineers, or airline maintenance personnel. Instead, Emery engages charter airlines and utilizes regularly scheduled commercial aircraft to transport the freight that Emery trucks pick up from customers and deliver to air cargo facilities. Each of these chartered airlines operates under its own Civil Aeronautics Board (CAB) authority, employs its own pilots and engineers, and is responsible for the airplanes and their upkeep. During the time that the aircraft are not chartered by Emery, the respective airlines are free to use their planes for other customers. Emery leases the 10 or so aircraft that it owns to a West Coast firm, IASCO Airline. Although freight is moved on these aircraft operated by IASCO, none of it enters the New York area.

The Board held in 1962 that jurisdiction would be asserted over an employer holding a freight forwarder's operating authorization issued by the CAB, notwithstanding the contention that the employer was covered by the RLA, inasmuch as the employer operated independently of any airlines and was not itself an operator of aircraft.[3] Similarly, it is the Board's longstanding policy to assert jurisdiction over freight forwarders and trucking companies.[4]

Local 295, however, maintains that little weight should be given to the prior exercise of the Board's jurisdiction over Emery because the nature of Emery's operation has changed radically over the past several years to the point that Emery now functions as a common carrier by air. As evidence of this major transformation, Local 295 relies on the aforementioned CAB 418 certificate, as well as various other public documents.

We find no merit in this contention. Emery held the section 418 certificate only from May 1979 until January 1980, when it was surrendered. During that 9-month period, Emery never operated as an all-cargo airline, and thus did not make use of the authority granted in the certificate. In fact, Emery continued to perform the same services after it surrendered the certificate as it had previously, without any change in its operations. Further, the evidence reveals that the references in Emery annual reports and other Emery publications to Emery's "Air Force" and "small package airlines" merely are advertising and public relations techniques, and in no way are related to the operation of an airline by Emery.

Thus, while the RLA may apply to the activities of the various airlines chartered by Emery to ship freight, it does not follow that the RLA applies to Emery by reason of its utilization of those airlines, where the relationship is that of a shipper by air pursuant to a contract. There must be a more direct connection than there is here between Emery's employees and the transportation function to warrant a finding that Emery is covered by the RLA. Accordingly, we find that Emery is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Local 295 and Local 504 are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

Emery employees in the New York metropolitan area deliver consolidated freight to Hangar 5 at J.F.K. International Airport, the facility currently rented by the several airline companies that have been chartered to ship the freight to various destinations. Traditionally, the various contracts between Emery and the charter airlines have provided that the airlines' own employees, or those of an independent cargo-handling service contractor engaged by the airline, load and unload the trucks and aircraft at the hangar. For about the past 6 years, Evergreen International Airlines, herein called Evergreen, has been the primary airline chartered by Emery at J.F.K. International Airport, and is the airline involved in the factual context of the instant dispute. Since early 1974 (except for the period between June 1977 and July 1978, as explained below), Servair has been the independent contractor performing the cargo-handling work at Hangar 5 for Evergreen, as well as the other charter airlines engaged by Emery at J.F.K.

Law Judge in Board Cases 29-CC-700, 701, 702, 703, and 29-CE-47 and 48, would serve as the entire record of the 10(k) proceeding. The briefs submitted to the Administrative Law Judge by Servair, Emery, and the General Counsel have been made part of Servair's brief to the Board in the instant proceeding and, therefore, we will consider those briefs in our determination of the dispute presented to us here.

[2] *Local 295, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Emery Air Freight Corporation)*, 197 NLRB 26 (1972).

[3] *Wings & Wheels, Inc.*, 139 NLRB 578 (1962), enfd. 324 F.2d 495 (3d Cir. 1963).

[4] See, for example, *Mohican Trucking Company*, 131 NLRB 1174 (1961); *Freight Drivers and Helpers Local Union No. 557, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Liberty Transfer Company, Inc.)*, 218 NLRB 1117 (1975).

All Emery employees who are involved in the consolidation, delivery, and pickup of freight that moves through Hangar 5 are represented by Local 295. Servair employees working at the hangar are represented by Local 504. The equipment used during the cargo-handling operation at Hangar 5 consist mainly of FMC loaders, air generators, and hi-low trucks. Similar versions of the hi-low trucks are used by Emery employees represented by Local 295 at other Emery facilities in the New York area where freight is consolidated for air shipment.

In September 1976, Local 295 claimed the right to perform the hangar work then being done by Servair employees represented by Local 504, and filed a grievance in that connection. An agreement ultimately was reached in August 1977 whereby Local 295 would withdraw the grievance if Servair were replaced by Triangle Maintenance Corp., herein called Triangle, a cargo-handling company whose employees were represented by another Teamsters local. The parties further agreed that Emery would use its best efforts to arrange with the airlines for the substitution of Triangle, contingent upon Triangle's service being comparable to certain standards, and the cost of the service provided by Triangle remaining competitive. If either service deteriorated or costs became uncompetitive, the airline could terminate its contract with Triangle, and Local 295 would waive its claim for any of the work covered by the cargo-handling contract.

Pursuant to this agreement, in mid-1977, Triangle replaced Servair as the firm retained by Evergreen to handle the Emery freight. About a year later, however, when Triangle demanded an increase in the rates that it charged in excess of the competitive pricing levels, Evergreen terminated the contract. Thus, Servair resumed the cargo handling for Evergreen (and therefore Emery) in Hangar 5 in July 1978. Despite the August 1977 agreement, Local 295 filed a second grievance in June 1978 renewing its claim to the work of loading and unloading at the hangar. Local 295 sought to distinguish the June 1978 grievance from the earlier one by restricting its claim to the loading and unloading of trucks and containers; the September 1976 grievance claimed the loading and unloading of aircraft.

Hearings before an arbitrator commenced in June 1979 but, before they were concluded, Local 295 and Emery began to negotiate a new collective-bargaining agreement to cover the period of September 1, 1979, through August 31, 1982. During the negotiations in the summer of 1979, Local 295 demanded that the scope of the contract be expanded to cover the work of loading and unloading of trucks and aircraft at Hangar 5.

When negotiations reached an impasse, Local 295 struck Emery on September 12, 1979. Later that month, Local 295 proposed to end its strike if, among other things, Emery agreed to add a new provision to the collective-bargaining agreement unrelated to past practice. The new language covered the services then being performed by Servair for Evergreen pursuant to the terms of the Servair-Evergreen contract. Emery eventually agreed that the services previously provided at Hangar 5 by Servair would be taken over by Emery employees as of January 7, 1980. The change was effected by adding to the collective-bargaining agreement the following provision to the unit description previously in effect:

> Employees employed at Hangar 5 or its equivalent in connection with the loading and unloading of trucks, the breakdown and buildup of containers and pallets, and the transfer to FMC loader or its equivalent located outside of the Hangar incidental to shipping by leased, owned or chartered aircraft shall be covered by this Agreement, so long as the same are operated within the jurisdiction of the Union as defined herein.

A new collective-bargaining agreement between Emery and Local 295 containing this new language was executed on or about October 1, 1979.[5]

Pursuant to this contract change, on the evening of January 7, 1980, six Emery employees hired to replace the Servair cargo handlers arrived at Hangar 5 and punched in for work. According to Robert Foglia, the Emery official present at that time, the new contractual language entitled those six employees to load and unload the Emery trucks—work previously performed by Servair employees. Shortly thereafter, however, the president of Local 295, a Mr. Calise, arrived at the hangar and demanded that the six Emery employees should operate the FMC loader and the hi-low trucks to load and unload the aircraft, as well as the trucks.

Foglia told Calise that the aircraft work demand was contrary to the new provision of the parties' collective-bargaining agreement, and that Emery would not comply with that demand. In addition, the Servair supervisors present objected to allowing Emery personnel to operate Servair's FMC

[5] Servair filed charges with the Board in December 1979, alleging that this new language in the Emery-Local 295 contract violated Sec. 8(e) of the Act. These charges became the subject of the hearing before the Administrative Law Judge referred to in fn. 1 above. The Administrative Law Judge has not yet issued a decision in the matter.

loader and hi-low trucks. Servair employees thus continued to load and unload the aircraft, using the aforesaid equipment. Inside the hangar, the Servair personnel operated the equipment with the Emery employees sitting alongside for the purpose of learning the operation. The work proceeded throughout the shift into the next morning with this dual manning of Servair's equipment.

At the beginning of the next shift on the evening of January 8, 1980, the Local 295 representative, Mark Davidoff, in the presence of Teamsters officials Hunt and Calise, demanded the removal of Servair employees from Hangar 5, and insisted that the six Emery employees be permitted to deliver the freight from the hangar to the aircraft.

Emery officer Foglia testified that he told Davidoff that Emery did not control the hangar and could not order Servair employees out. During this conversation, Foglia stated that there was a contract under which Emery employees would do no work outside of the hangar and that the loading and unloading of the aircraft was not to be done by Emery employees.

Shortly thereafter, Davidoff directed the six Emery employees to walk off the job. Foglia advised the employees that they should remain on the job; that there was a contract in effect; and that by walking off the job each would subject himself to disciplinary action by Emery. The six employees disregarded this warning, and left the hangar. They soon established a picket line at the entrance to the hangar area, with signs declaring, "Emery Air Force Employees locked out."

The picketing stopped a number of trucks from entering the hangar area, and several trucks already at the loading dock were driven away without being unloaded. Evergreen, the airline chartered by Emery, was forced to divert airplanes to and from J.F.K. International Airport. Later during the shift, Local 295 President Calise told Foglia that the employees would return to work only if they could load and unload the aircraft. Emery refused. Calise then stated that the employees would return if Emery issued a letter to the effect that nothing happened on the evening of January 8, 1980. Emery also rejected this proposal. On January 9, 1980, Emery and Servair filed separate charges alleging that the aforementioned strike and picketing by Local 295 had violated Section 8(b)(4)(D) of the Act.

B. *The Work in Dispute*

The work in dispute involves the loading and unloading of trucks and aircraft,[6] the breakdown and buildup of containers and pallets, the transfer to FMC loader or its equivalent, and the transfer to and from aircraft at and outside Hangar 5, J.F.K. International Airport, Jamaica, New York, incidental to shipping by leased, owned, or chartered aircraft of Emery Air Freight Corporation.

C. *The Contentions of the Parties*

Servair contends that Local 295 engaged in coercive activity to force Emery to reassign to employees represented by Local 295 the Hangar 5 work previously contracted out to Servair and assigned to employees represented by Local 504, and thus violated Section 8(b)(4)(i) and (ii)(D). Specifically, Servair cites as coercive activity by Local 295 the demand that Emery officials "throw Servair out"; the strike against and picketing of Emery at Hangar 5; and the stopping of deliveries by third parties to and from Hangar 5.

It is Servair's position that its employees represented by Local 504 possess skills which are superior to those of employees represented by Local 295 with respect to the disputed work, and that the work in question historically has been performed by employees represented by Local 504. In this connection, Servair asserts that the application of the Board's traditional criteria, specifically, skills and work involved, collective-bargainingagreements, employer preference, and efficiency of operation, requires award of the work to employees represented by Local 504.[7]

Local 295 contends that it did not violate Section 8(b)(4)(D) in that its picketing was not done in an attempt to attain any work assigned to employees represented by another labor organization, but rather was aimed at obtaining Emery's compliance with the new provision in the parties' October 1, 1979, collective-bargaining agreement expanding the operations covered thereunder. Accordingly, Local 295 asserts that—pursuant to that agreement—employees represented by it have been assigned the work by Emery and, thus, they should be awarded the disputed work.

[6] While the notice of hearing did not include the work of loading and unloading aircraft, it is clear from the evidence presented at the hearing that this work is also in dispute.

[7] Emery and Local 504 also take the position, as set forth in their briefs in Cases 29-CC-700, *et al.*, mentioned in fn. 1, *supra*, that the disputed work is within the traditional jurisdiction of Local 504 and has been performed efficiently by it in the past. Local 504 further bases its claim to the work on its collective-bargaining agreement with Servair. In addition, Emery asserts that the clause in its current collective-bargaining contract awarding the work to employees represented by Local 295 violates Sec. 8(e) of the Act.

Local 295 maintains that Emery previously had never assigned the disputed work to employees represented by Local 504 or by any other labor organization, since it merely subcontracted the work. Local 295 argues that the issue between it and Emery consistently has been whether the Company should assign the disputed work to Emery employees or subcontract it out to another employer. According to Local 295, Emery on January 8 refused to comply with the aforesaid new provision and proceeded to lock out employees represented by Local 295. Under such circumstances, Local 295 asserts that it cannot be held that action taken to enforce Emery's agreement to assign the work to its own employees is violative of Section 8(b)(4)(D).

In any event, Local 295 contends that the work in dispute should be assigned to employees represented by it in accordance with application of the Board's traditional criteria.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

Beginning on January 8, Local 295 struck and picketed at Hangar 5 when Emery official Foglia refused to accede to its demands that Servair employees represented by Local 504 be removed from the premises and that employees represented by Local 295 be permitted to deliver the freight from the hangar to the aircraft.

The evidence, particularly the insistence by Local 295 officer Davidoff that Emery employees be permitted to operate the FMC elevator-loader and hi-low trucks to load and unload aircraft, reveals that an object of Local 295's activities at Hangar 5 on January 8 and 9 was to force the assignment of the disputed work to employees represented by it, instead of to employees represented by Local 504.

In this connection, at the hearing in this proceeding, Foglia testified that, during a January 7 meeting, Davidoff told him that Local 295 members were going to do all Hangar 5 loading and unloading, including the aircraft, and that there was "nothing further to discuss." Davidoff and Local 295 President Calise reiterated this demand on January 8, even though Foglia advised them that it was contrary to the collective-bargaining agreement.

Contrary to Local 295's contention that its picketing on January 8 was solely in furtherance of a lawful work preservation clause, there is no evidence that the work in dispute has ever been performed by employees represented by Local 295 for Emery at Hangar 5. Conversely, there was uncontradicted testimony that the loading and unloading of airplanes at Hangar 5 traditionally has been performed by employees of other employers represented by Local 504 and other labor organizations.

As to Local 295's contention that its members were locked out on January 8, the record demonstrates that, after Davidoff directed the Emery employees to leave Hangar 5 that night, Foglia, as he testified, stopped them, told them about the disputed provision in the collective-bargaining agreement, informed them that work was available, and warned them that they would be subject to disciplinary action if they walked off the job. This is corroborated by Pomodore, an Emery employee at Hangar 5 represented by Local 295. He testified that, as he was about to walk off the job on January 8, Foglia asked him not to go out and that, after picketing commenced, Foglia urged the employees on the picket line to return to work inside the hangar.

With respect to the contention of Local 295 that this dispute is not cognizable under Section 8(b)(4)(D), the Board has held that a jurisdictional dispute may exist regardless of whether the disputed work has been subcontracted by one employer to another,[8] or is being performed by the employees of one employer rather than those of another employer.[9] The critical issue to be determined under this section of the Act is the legality of a respondent union's attempt to force "any" employer, whether or not it is the employer employing either contending group of employees, to assign the disputed work to its members rather than to another group of employees.

As we held in *International Longshoremen's & Warehousemen's Union, Local 13, et al. (California Cartage Company, Inc.)*,[10] activity which is proscribed by Section 8(b)(4)(i) and (ii) of the Act and which is directed at ending the contracting out of work to a firm using members of another union involves a work assignment dispute cognizable under Section 8(b)(4)(D). The record in the instant case contains ample evidence that Local 295 engaged in such activity for an object of forcing Emery to

[8] *Local Union 354, International Brotherhood of Electrical Workers, AFL-CIO (F. G. Johnson Company, Incorporated)*, 200 NLRB 599 (1972).

[9] *Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO (Western Electric Company, Incorporated)*, 141 NLRB 888 (1963).

[10] 208 NLRB 986 (1974).

cease subcontracting the disputed work to employees of Servair represented by Local 504.

In view of the foregoing, we find that reasonable cause exists to believe that Section 8(b)(4)(D) of the Act has been violated and that, since there is no agreed-upon method for the voluntary adjustment of the dispute to which all parties are bound, we conclude that this dispute is properly before the Board for determination under Section 10(k) of the Act.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.[11] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[12]

The following factors are relevant in making the determination of the dispute before us:

1. Certification and collective-bargaining agreements

Neither Local 295 nor Local 504 has been certified by the Board as bargaining agent for the employees of either Emery or Servair, respectively, and thus certification is not a factor favoring either group of employees.

Both Emery and Local 295, and Servair and Local 504, have long-established collective-bargaining relationships. The current collective-bargaining agreement between Emery and Local 295 contains the following jurisdictional language:

> Employees employed at Hangar 5 or its equivalent in connection with the loading and unloading of trucks, the breakdown and buildup of containers and pallets, and the transfer to FMC loader or its equivalent located outside of the Hangar incidental to shipping by leased, owned or chartered air craft shall be covered by this Agreement, so long as the same are operated within the jurisdiction of the Union as defined here.

This language clearly covers part of the work in dispute, albeit not all of it.

On the other hand, the description of Local 504's jurisdiction in its collective-bargaining agreement with Servair covers all of the work in dispute. The pertinent section of the Servair-Local 504 agreement provides:

> This Agreement shall cover all employees of the Company whose work assignments consist of baggage (other than skycaps), mail, express and other cargo for loading and unloading, and of maintaining the appearance of airplanes, exterior and interior, the air conditioning of airplanes, operation and maintenance of automotive and other equipment used in such assignment, and the ground securing and releasing of aircraft, or any combination of above duties, or any related duties.

To the extent that both collective-bargaining agreements cover the work in dispute, this factor favors neither group of employees. However, since Local 504's contract covers all of the work and Local 295's contract covers only part of the work, we find that with respect to the portion of the work not covered by the Local 295 contract this factor favors an award to the employees represented by Local 504.

2. Company practice and employer preference

From 1973 through the hearing date in this matter, the disputed work has been performed by subcontractors of the charter airlines engaged by Emery, primarily Servair. Servair employees who have performed the work since 1973 (exclusively since mid-1978) have been and are represented by Local 504. Except for January 7, when dual manning of the loading equipment by Emery and Servair employees occurred, employees represented by Local 295 never have performed the disputed work. Even on that date, however, Emery and Servair refused to comply with the demand of Local 295 that its members operate such equipment exclusively, as well as up to and onto the aircraft.

With respect to employer preference, Servair—and Emery indirectly as a result of subcontracting to Servair by way of Evergreen and other charter airlines—consistently has assigned the work in dispute to employees represented by Local 504. Both Emery and Servair continue unequivocally to prefer those employees over employees represented by Local 295; and the mixed assignment to employees represented by the two Unions occurring on January 7 was inconsistent with the longstanding company practice and preference. Accordingly, the factor of company practice and employer preference favors awarding the disputed work to employees represented by Local 504.

3. Relative skills

The work in dispute generally is unskilled and, at most, involves skills which are easily learned. Further, the record shows that both groups of employ-

---

[11] *N.L.R.B.* v. *Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

[12] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

ees have satisfactorily performed the work or work like it, as the case may be. Accordingly, we find that the factor of relative skills does not favor awarding the work to one group of employees, rather than the other.

4. Economy and efficiency of operation

The equipment used to perform aircraft loading and unloading and related hangar work is specialized and expensive. This equipment (e.g., FMC elevator loaders, large forklifts, air generators, and airline stairs) is not part of Emery's inventory of equipment and, if it could not arrange for leasing, it would be required to make a substantial outlay of capital to purchase such equipment if the work in question were awarded to employees represented by Local 295.

In contrast, Servair already has the necessary equipment, and its capital investment in the equipment can be spread over its many airline contracts. Further, Servair uses the equipment 7 days a week for 24-hour periods to serve the freight handling of numerous airlines, while Emery would deploy the equipment only 5 days a week, 8 to 10 hours a day, thus applying its amortization cost over a smaller base. We conclude that the matter of economy and efficiency of operation is a factor favoring employees represented by Local 504 in reaching our determination.

5. Joint Board awards

No third parties—either arbitrators or joint boards—have awarded the work in dispute to employees represented by either Local 295 or Local 504. Accordingly, this factor is not determinative.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees who are represented by Local 504 are entitled to perform the work in dispute. We reach this conclusion relying, in part, on the well-established practice of Emery to leave to the charter airlines the subcontracting of the hangar work to Servair. It is apparent that Emery, Servair, and the airlines prefer to continue this arrangement, which results in the assignment of the work to employees represented by Local 504. We also regard as significant the relevant collective-bargaining agreements. Employees represented by Local 504 have been assigned the hangar and aircraft work pursuant to their collective-bargaining agreement with Servair. Although a portion of the disputed work is covered by the current contract between Emery and Local 295, that agreement does not entitle employees represented by Local 295 to perform the transfer of cargo to and from aircraft, or to load and unload aircraft. Finally, it is more economical and efficient to assign the work to the employees represented by Local 504.

In making this determination, we are awarding the work in question to employees who are represented by Local 504, but not to that Union or its members. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

1. Employees of Servair, Inc., who are represented by Local 504, Transport Workers Union of America, AFL-CIO, are entitled to perform the loading and unloading of trucks and aircraft, the breakdown and buildup of containers and pallets, the transfer to FMC loader or its equivalent, and the transfer to and from aircraft at and outside Hangar 5, J.F.K. International Airport, Jamaica, New York, incidental to shipping by leased, owned, or chartered aircraft of Emery Air Freight Corporation.

2. Local 295, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force or require Servair, Inc., or Emery Air Freight Corporation, to assign the disputed work to employees represented by that labor organization.

3. Within 10 days from the date of this Decision and Determination of Dispute, Local 295, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, shall notify the Regional Director for Region 29, in writing, whether or not it will refrain from forcing or requiring the Employers, by means proscribed by Section 8(b)(4)(D) of the Act, to assign the disputed work in a manner inconsistent with the above determination.